

IN THE SUPREME COURT OF THE STATE OF DELAWARE

901 MARKET, L.L.C.,	§	
	§	No. 88, 2011
Plaintiff Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
CITY OF WILMINGTON,	§	
	§	C. A. No. N10A-01-005
Defendant Below,	§	
Appellee.	§	

Submitted: July 13, 2011  
Decided: September 12, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 12<sup>th</sup> day of September, 2011, on consideration of the briefs of the parties, it appears to the Court that:

1) 901 Market, L.L.C. (Market) appeals from the Superior Court's denial of its petition for a writ of *certiorari*. On November 1, 2009, Market applied for enrollment in the City of Wilmington's Property Tax Incentive Exemption Program. On December 7, the City denied Market's application as untimely. In its denial letter, the City explained that an application for an incentive exemption must be filed within 60 days of the October 1, 2007 notification of a change in assessment. Market

attempted to reverse that decision by filing a petition for a writ of *certiorari*. The Superior Court denied the petition, and we affirm.

2) Market raises several arguments on appeal, all of which misapprehend the nature and scope of a common law writ of *certiorari*. In *Maddrey v. Justice of the Peace Court 13*,<sup>1</sup> this Court explained the limited review available:

A writ of *certiorari* is *not* a substitute for, or the functional equivalent of, an appeal.

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The reviewing court does not consider the merits of the case. It considers only . . . whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly . . . . [A] decision will be reversed for an error of law . . . when the record affirmatively shows that the lower tribunal has proceeded illegally or manifestly contrary to law . . . .

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[T]he Superior Court cannot look behind the face of the record. Rather, it can only review the record for the purpose of confirming an irregularity in asserting jurisdiction, an improper exercise of its power or the declaration of an improper remedy by the inferior tribunal.<sup>2</sup>

3) The issues on appeal do not concern the City's power to deny Market's application, lack of jurisdiction or an improper remedy. Rather, Market seeks review of the City's factual and legal conclusions. For example, it contends that the City

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<sup>1</sup>956 A.2d 1204, 1213 (Del. 2008).

<sup>2</sup>*Id.* at 1213-1215 (Internal quotations and citations omitted.).

should have used October 1, 2009 as the starting date for the 60 day time limit for filing its application. But the merits of the City's interpretation of its statute are not subject to *certiorari* review.

4) Market's remaining arguments relate to the 2009 Stipulation and the fact that the City made its decision without making a finding about the date the Stipulation was issued. Market contends that it was denied the opportunity to present evidence and be heard on that issue. Again, Market is ignoring the limitations of *certiorari* review. The record in this case consists of Market's application and the City's denial letter. That record does not reveal, "an irregularity in asserting jurisdiction, an improper exercise of [the City's] power or the declaration of an improper remedy . . . ." <sup>3</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>3</sup>*Id.* at 1215.